

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

April 15, 1997

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-0463-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

State of Wisconsin,

Plaintiff-Respondent,

v.

Jurgen Brinkman,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Milwaukee County: ELSA C. LAMELAS, Judge. *Affirmed.*

Before Wedemeyer, P.J., Schudson and Curley, JJ.

PER CURIAM. Jurgen Brinkman appeals from a judgment of conviction for prostitution, contrary to § 944.30(1), STATS. Brinkman argues that there was insufficient evidence to support his conviction and that he was entrapped by the arresting officer. We reject his arguments and affirm.

This case was tried to the court on stipulated facts consisting of the two-page arrest report. Brinkman, a German consultant, was visiting the United States on a business trip when he was arrested for prostitution. According to the report by the arresting undercover officer:

On Fri., 08-11-95 at approx. 8:05 P.M., P.O. STACY ROBRAHN was working in an undercover capacity as a female decoy for a prostitution operation in the area of 827 S. 19th St. While working in this capacity, P. O. ROBRAHN was approached by the defendant who was driving a white Grand Am ... and engaged the officer in conversation. During this conversation the defendant stated, "I would like to have some fun with you." The officer replied, "What kind of fun?" Defendant answered, "Just some sex." Officer responded, "It will cost you 20." Defendant agreed. Defendant was placed under arrest.

According to the police report's account of Brinkman's statement following his arrest, "this is the first time he's done this," "the girl waved him to the curb," and "they discussed having sex for \$20.00." Brinkman further stated he was not sure if he was paying \$20 in U.S. or Deutchmarks, and he thought "this is legal in Germany."

Brinkman was convicted of prostitution under § 944.30(1), STATS., which provides that anyone who intentionally "[h]as or offers to have or requests to have nonmarital sexual intercourse for anything of value" is guilty of a Class A misdemeanor. Brinkman argued that he did not violate § 944.30(1) because he did not "request" to have nonmarital sexual intercourse for money since it was the undercover officer who suggested sex for money and he only agreed. Brinkman also argued entrapment. The trial court rejected both arguments.

Because the facts of this case were stipulated, this court reviews only the trial court's application of the statute to the facts. See *First Nat'l Leasing Corp. v. City of Madison*, 81 Wis.2d 205, 208, 260 N.W.2d 251, 253 (1977). Our review is *de novo*. See *id.*

We reject Brinkman's hypertechnical reading of § 944.30(1), STATS., and his assertion that his agreement to engage in sex for money was insufficient to satisfy the statute. See *State v. Mendoza*, 96 Wis.2d 106, 115, 291 N.W.2d 478, 483 (1980) (statutes must be interpreted to avoid absurd or unreasonable results). Brinkman concedes that he “expressed a wish to have sex with” the undercover officer. He then engaged her in a conversation about having sex and agreed to the price of \$20. The overall factual scenario clearly indicates that Brinkman did, indeed, make a “request.” Although his initial comment to the undercover officer did not specify money, his continued participation and conversation clearly constituted his request to have nonmarital sexual intercourse for money. In sum, the elements of § 944.30(1) were met.

We also reject Brinkman's argument that the undercover officer entrapped him. A defendant asserting an entrapment defense must prove by a preponderance of the evidence that a law enforcement officer has used improper methods to induce the commission of an offense that he or she was not otherwise disposed to commit. See *State v. Saternus*, 127 Wis.2d 460, 472, 381 N.W.2d 290, 295 (1986). As Wisconsin Criminal Jury Instruction 780 states, “The law recognizes that, in the enforcement of the law, it is often necessary for law enforcement officers to set traps to catch criminals by affording them the freest opportunity to commit offenses which they are disposed to commit.” Police officers may not, however, use “excessive incitement, urging, persuasion, or temptation,” or “create[] more than the usual or ordinary opportunity to commit the offense” that is likely to induce the commission of an offense by a person not already disposed to commit an offense of that kind.” *Id.* Further, when the police suspect that someone is soliciting an act of prostitution, “it is not improper for the police to pretend to be somebody else and to offer ... to have intercourse for money.” *Id.*

Brinkman points to nothing that would indicate that the undercover officer used “excessive incitement, urging, persuasion, or temptation,” or “created more than the usual or ordinary opportunity” for Brinkman to commit the offense. Therefore, we reject his entrapment argument.

By the Court. – Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.